

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DANNY CARDENAS, JR.,

No. C 13-0253 JSW (PR)

Petitioner,

**ORDER OF DISMISSAL;
GRANTING LEAVE TO
PROCEED IN FORMA PAUPERIS**

v.

WARDEN,

Respondents.

(Docket No. 2)

Petitioner, a prisoner of the State of California proceeding pro se, has twice previously had his federal habeas petitions dismissed for failure to exhaust his state court remedies because he indicated that he had not sought review of his conviction in the California Supreme Court. Petitioner has filed a third habeas petition, and once again has indicated that his claims have not been presented to the California Supreme Court. (Pet. at 3.)

As has been explained to Petitioner twice previously, this Court may not consider his claims until he has properly exhausted his claims by presenting them to the California Supreme Court. *See* 28 U.S.C. § 2254(b),(c); *Granberry v. Greer*, 481 U.S. 129, 133-34 (1987). He has not presented any exceptional circumstances to excuse his failure to exhaust. *See id.* at 134. Accordingly, the petition is DISMISSED without prejudice to filing a new federal petition if he does not obtain relief after properly presenting his claims to the California Supreme Court.


Rule 11(a) of the Rules Governing Section 2254 Cases now requires a district court to rule on whether a Petitioner is entitled to a certificate of appealability in the same order in which the petition is decided. Petitioner has failed to make a substantial showing

1 that his claims amounted to a denial of his constitutional rights or demonstrate that a
2 reasonable jurist would find this Court's denial of his claim debatable or wrong. *Slack v.*
3 *McDaniel*, 529 U.S. 473, 484 (2000). Consequently, no certificate of appealability is
4 warranted in this case.

5 In light of Petitioner's lack of funds, his application for leave to proceed in forma
6 pauperis is GRANTED (docket number 2).

7 IT IS SO ORDERED.

8 DATED: March 1, 2013


9 JEFFREY S. WHITE
10 United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

DANNY CARDENAS JR,
Plaintiff,

Case Number: CV13-00253 JSW

CERTIFICATE OF SERVICE

v.

WARDEN,

Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on March 1, 2013, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Danny Cardenas G-36254
M.C.S.P.
P.O. Box 409020
#G36254
Ione, CA 95640

Dated: March 1, 2013



Richard W. Wieking, Clerk
By: Jennifer Ottolini, Deputy Clerk